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**Some features of legal regulation  
of Operational-Investigative  
activities in the fight against  
environmental offenses**

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**Экологиялық қылмыстық  
құқықбұзушылықтармен  
күрес жүргізу бойынша  
жедел-ізвестіру қызметінің  
құқықтық реттелуінің кейбір  
ерекшеліктері**

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**Некоторые особенности  
правового регулирования  
оперативно-розыскной  
деятельности в борьбе  
с экологическими уголовными  
правонарушениями**

This article discusses the issues affecting the problem of environmental safety. And measures for their prevention are proposed.

**Key words:** environmental security, the fight against crime, objectives, environmental offenses, latency, crime, statistics.

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Осы мақалада экологиялық қауіпсіздік мәселелерін қозғайтын сұрақтары қарастырылып отыр. Және оларды алдын алу шаралары ұсынылады.

**Түйін сөздер:** экологиялық қауіпсіздік, қылмыспен күрес, мақсаттар, экологиялық құқықбұзушылықтар, латенттік, қылмыс, статистика.

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В данной статье рассматриваются вопросы, затрагивающие проблему экологической безопасности. И предлагаются меры по их предупреждению.

**Ключевые слова:** экологическая безопасность, борьба с преступлениями, задачи, экологические правонарушения, латентность, преступления, статистика.

**SOME FEATURES OF  
LEGAL REGULATION  
OF OPERATIONAL-  
INVESTIGATIVE  
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Rights and freedoms of man and citizen throughout history have always been the focus of mankind. The problem of the relationship between the individual and the state is often the cause of various wars, uprisings and internal contradictions in society. It was a kind of motor of development of human thought and social progress, the result of which we can see by looking at the world today, where the basis for the construction of the majority of states are democratic values. Moreover, according to E.A. Lukashev one of the leading experts in the field of human rights theory: «Human rights are not realized automatically, even under favorable conditions. Efforts are therefore needed, and even fight for their human rights and freedoms, which should naturally be included in the system of measures constituting the unity of the mechanism of protection of human rights» [1]. Hence it follows generally accepted thesis of significant importance and primary of practical necessity of scientific research of challenges of the human rights dimension of human rights, which is in a separate and extremely generalized form is an institution of human rights protection.

In accordance with the Constitution of the Republic of Kazakhstan Republic of Kazakhstan proclaims itself a democratic, secular, legal and social state whose highest values are human, his life, rights and freedom. Thus, the state aims to protect the environment favorable for human life and health [2]. At the same time, ensuring a healthy environment, protection of environmental human rights of the Republic of Kazakhstan is a key issue of our time. In this regard, effective legal measures necessary to safeguard and protect of the environment.

According to M.D. Karazhanov, the starting point of a new stage in the development of environmental safety was the adoption of the Environmental Security Concept of the Republic of Kazakhstan for 2004-2015, which was approved by Decree of the President of the Republic of Kazakhstan of December 3, 2003. The aim of this concept is to implement the new provisions of the policy of environmental safety. But later the Decree of the President of the Republic of Kazakhstan of April 13, 2011 № 47 «On the Repeal of certain decrees of the President of the Republic of Kazakhstan» the Concept of environmental security and the Concept of the Republic of Kazakhstan to Sustainable Development for 2007 – 2024 years

have expired. All these acts although they had the exact purpose, but were not implemented until the end [3].

Therefore, for the further adoption of the Concept and the choice of ways to combat crimes encroaching on environmental safety, studies of Doctor of Law, Professor I.Sh. Borchashvili that were made in the 90's of last century should be noted [4].

Future strategy to combat crimes encroaching on environmental safety, indicates Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, approved by the Decree of the President of the Republic of Kazakhstan of August 24, 2009. It clearly states that for our country, in some regions where there is a difficult ecological situation, it is very important to develop and further improve the environmental legislation, including in the context of its harmonization with international commitments and standards. In order to improve the environmental activities efficiency should be a clear distinction between the mechanisms of legal regulation of the use of natural resources and its protection. Environmental legislation should encourage rational use of natural resources and compliance with environmental standards, development of cleaner production and environmentally friendly behavior of citizens. Improvement and consolidation of numerous regulations governing relations in the field of natural and man-made disasters, civil defense, fire and industrial safety is required, that will improve the quality and level of legal regulation in these areas of public relations [5].

In accordance with the Law of the Republic of Kazakhstan of June 26, 1998 N 233 «On National Security of the Republic of Kazakhstan» environmental security – is a condition of protection of the vital interests and rights of the individual, society and the state from threats, resulting from anthropogenic and natural impacts on the environment [6].

One of the problems affecting the rights and freedoms of citizens, is environmental safety. The Republic of Kazakhstan is one of the first countries sounded the alarm to combat crimes encroaching on environmental safety. Back in the 80's of last century Kazakh scientist Olzhas Suleimenov was the first to fight for the closure of the Semipalatinsk nuclear test site. And in 1991, by the Decree of the President of Kazakhstan Nursultan Nazarbayev number 409 of 29 August 1991 the Semipalatinsk nuclear test site was closed forever, but these problems of combating environmental crime was not the end, there are new

challenges such as globalization, due to the rapid deployment of high economic capacity [3].

Environmental protection- is one of the most pressing problems of our time. Scientific and technological progress and strengthening of human pressure on the natural environment will inevitably lead to an aggravation of the environmental situation: nature is lost aesthetic values are lost, physical and mental health is getting worse, the economical and political struggle for commodity markets and living space are exacerbated [7].

The Criminal Code of components of environmental offenses are in a separate chapter 13. This is due to the particular importance of the benefits and values covered by protection of the interests of environmental safety in the Republic of Kazakhstan.

According to statistics in the Republic of Kazakhstan there is a significant increase in the number of reported environmental offenses: if in 2012 there were registered 348 crimes, in 2013 it was 571, and an increase is 64%. And for 11 months of 2014 there were registered 771 crimes.

In analyzed period the bulk of recorded environmental crimes accounted for four components of crime: illegal harvesting of aquatic animals and plants (Art. 287) in 2013 -184, in 2014 – 225; illegal hunting (v. 288) in 2013 – 104, in 2014 – 94; illegal handling of rare and endangered species of plants and animals (Art. 290) in 2013 – 158, in 2014 – 327; illegal felling of trees and shrubs (Art. 291) in 2013 – 82, in 2014 – 88 crimes [8]. The analysis clearly showed that in the country anthropogenic impact on environment has increased.

In the view of M.D. Karazhanov, although the statistics indicate a large contribution of internal affairs bodies in combating crime, encroaching on environmental safety, crime in most cases remains latent [3].

Statistics of environmental crimes, in the opinion of T.V. Raskina, according to various studies reflect a tiny fraction of real criminal acts: their latency reaches 95-99%. The main determinants of latency – are not detecting crimes [9].

In this regard, a number of measures taken by the State to ensure environmental safety an important role in detecting, preventing and combating environmental crime play operational-investigative activity, namely subjects who have the right, in accordance with the Law «On Operational-Investigative Activities» to carry it out.

Low detection of crime entails a sense of impunity, permissiveness, which are the strongest criminogenic factors.

Analyzing a number of norms affecting the protection of life, health, rights, freedoms and legitimate interests of citizens, property from illegal encroachments in implementing operational-investigative activities of some CIS countries, following findings related to environmental safety were made.

Thus Article 2 of the RF Federal Law «On Operative-Investigative Activity» of 12 August 1995 N 144-FZ and Article 3 of the Law of the Republic of Moldova «On Operational-Investigative Activities» of April 12, 1994 indicates one of the tasks of operational-investigative activities combating environmental crime, uniting acts encroaching on kinds of objects such as environmental security of the country. Environmental crimes are often transnational in nature, therefore operational-investigative activities called upon to play an important role in the implementation of internal affairs bodies of their obligations under the Environmental Protection [10], [11].

However, analyzing the content of Article 3 of the Law of the Kyrgyz Republic «On Operational-Investigative Activities» of October 16, 1998 №131, Article 3 of the Law of the Republic of Be-

larus of July 9, 1999 №289-Z «On Operational-Investigative Activities», Article 5 of the Law of June 20, 2002 № IX-965 «On Operational-Investigative Activities», Art. 3 of the Law of the Republic of Ukraine of February 18, 1992 №2135-XII «On Operational-Investigative Activities», as well as Article 2 of the Law of the Republic of Kazakhstan of September 15, 1994 № 154-XIII «On Operational-Investigative Activities», in the list of tasks of the operational-investigative activities to ensure environmental safety independent problem is not provided [12],[13],[14],[15],[16].

Analyzing the above, we believe that Article 2 «The tasks operational and investigative activity» of the Law of the Republic of Kazakhstan «On Operational-Investigative Activities» needs to be expanded by formulating it in the following edition: «assistance in ensuring environmental safety and security of society, the state and strengthening of its economic potential and defense capability».

In conclusion, we note that this problem has staging character and does not claim to be a final decision on protection of life, health, rights, freedoms and legitimate interests of citizens, property from illegal encroachments in implementing OIA.

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